APPENDIX A

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: January 07, 2008
Suraiya A. Mateen
2302 Merrymount Drive
Suwanee, GA 30024

Case No. S07C1814

SURAIYA A. MATEEN et al. v. FRANK DICUS

COURT OF APPEALS CASE NO: A05A1372

The Supreme Court today denied the petition for certiorari in this case.

All the justices concur.

Therese s. Barnes, Clerk

APPENDIX B

FIRST DIVISION
ANDREWS, P.J.,
PHIPPS AND MIKELL, JJ.

Court of Appeals
of the State of Georgia (Seal) June 27, 2007

IN THE COURT OF ALLEALS OF GEORGIA

A05A1372. MATEEN et al. DICUS
MK- 064

MIKELL, Judge,

In Mateen v. Dicus, the Supreme Court reversed Division 1 of our opinion in this case, holding that we erred in concluding that we lack jurisdiction to consider two enumerations of error because appellants Suraiya A. Mateen , Roohi Fatima Faiyaz and Reema

Mohammedi failed to include the relevant orders in their notice of appeal. Accordingly, our prior judgment as to Division 1 is vacated, and the judgment of the Supreme Court is made the judgment of this court. The Supreme Court remanded the case with direction that we consider appellants' remaining enumerations on the merits, We do so below.

1. Appellants complain that the trial court erred in adding a party, defendant Amtul Hameed, through publication. Appellants argue that service by publication was unauthorized because "Plaintiffs were very well aware of the party's address." This argument fails for three reasons. First, Hameed is not a party to this appeal, and appellants have no standing to voice a vicarious objection to the sufficiency of service upon another party.

Second, appellants waived the argument by failing to assert it in the trial court. The record reveals that at a motions hearing, the court asked defendant Mateen, "are you here to argue defendant Hameed's motion for..... insufficiency of service of process? Mateen replied "No". The court stated "Hameed is not [here]. As far as you know, she's in India." Mateen replied "Yes Sir". It is well established that "one cannot complain of a judgment , order, or ruling that his own procedure or conduct procured or aided in causing. Appellants have waived any right to complain of the method of service upon Hameed.

Third, appellee Dicus complied with OCGA § 9-11-4(f)(1)(A) in obtaining the order for service by publication. He submitted as affidavit averring that he believed that Hameed resided in India but that he did

not know where she could be found. Pursuant to the statute, the trial court may grant an order permitting service by publiction if, among other things, the affidavit is proper. In this case , appellants offered no evidence to contradict the affidavit. Thus , the trial court did not err in ordering service by publication upon Hameed.

2. Appellant contend that the trial court erred in refusing to set aside the default judgment entered against them because Dicus's voluntary dismissal with prejudice of defendant John Walrath rendered the default judgment void. Walrath was the attorney who prepared the documents transferring the properties that were the subject of the fraudulent conveyance action. Appellants' contention that a voluntary dismissal with prejudice of an alleged joint tortfeasor

renders void the judgment entered against the remaining defendants is not supported by Georgia law. "A voluntary dismissal with prejudice constitutes a final disposition of the underlying action only as far as the parties involved in the voluntary dismisssal are concerned.... The effect of a voluntary dismissal does not extend to any party not named therein. Furthermore, pursuant to OCGA § 9-11-54(b), an order " which adjudicate fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties," In the case at bar, the dismissal with prejudice adjudicated the liabilities of only one party. It neither terminated the action nor rendered the default judgment void. The Trial Court did not err in refusing to set aside the default judgment.

3. All pending motions filed by appellants are denied.

Judgment affirmed. Andrews, P.J. and Phipps,J.,

concur.

Footnotes:

1. 281 Ga.455(637 SE 2d 377) (2006)
2. Mateen v. Dicus, 275 Ga.App.742,743-744(1) (621 SE2d 487) (2005)

3. 281 Ga at 457. The remainder of our rulings were left undisturbed, and our prior decision is reversed only insofar as it is inconsistent with the Supreme Court's decision.

4. Phillips v. Phillips, 159 Ga. App. 676, 677 (2)(285 SE2d 52) (1981). Accord, Ueal v. AAA Partners in adoption, 269 Ga. App. 258, 260 (2)(603 SE2d 672)(2004)

5. (Citations and punctuations omitted.) Parlato v. City of Atlanta, 151. Ga. App. 235, 237 (259 SE2d 217)(1079).

6. Headquarter v, Merrill Lynch, Pierce, Fenner & Smith, 272 Ga. 209, 211-212(2) (528 SE2d 508) (200) (voluntary dismissal of employee does not bar vicarious liability of employer for employee's tortious acts unless dismissal is statutorily described as an adjudication on

the merits).

7. See Tanaka v. Pecqueur, 28 Ga. App. 380, 383(5) (601 SE2d 830)(2004)

APPENDIX C Record Page Nos: 3737-3738

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

FRANK DICUS
Plaintiff

vs.

MOHAMMAD A, Faiyaz
SURAIYA A. MATEEN
ROOHI FATIMA FAIYAZ
REEMA MOHAMMEDI
JOHN G. WALRATH and
AMTUL HAMEED
Defendants

CIVIL ACTION
FILE NO. 98-A-2162-7

ORDER

Defendant Mateen filed her Motion to Set Aside Default Judgment on October 21, 2003. This Court has previously considered this issue, and this defendant presents no new evidence for the Court's consideration.

It is clear from the record that Defendant was present at the February 7, 2001 hearing on Plaintiff's

Motion for Sanctions, based on defendant's non - compliance with the Court's Order imposing sanctions in connection with compelling depositions, which resulted in the striking of Defendants Answer and entry of a Default Judgment against her on February 12, 2001. This Defendant has made the same allegation of fraud prior to and since then in various different fashions. As such, the Motion is HEREBY DENIED.

This case is on the Court's November 10, 2003 Jury Trial calendar for a trial on damages, and all interested parties should be present and prepared to proceed upon being called in by the Court.

SO ORDERED, THIS 5TH of November, 2003.

/Sd/

MELODIE SNELL CONNNER, Judge
Superior Court of Gwinnett County

Cc: Richard Capriola, Esq
Roohi Faiyaz
Reema MuhAMMED
Suraiya Mateen
Muhammed.Faiyaz
Amtul Hameed

APPENDIX D Record Page No. 003594 - 3595

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

FRANK DICUS
Plaintiff

vs.

MOHAMMAD A, Faiyaz
SURAIYA A. MATEEN
ROOHI FATIMA FAIYAZ
REEMA MOHAMMEDI
JOHN G. WALRATH and
AMTUL HAMEED
Defendants

CIVIL ACTION
FILE NO. 98-A-2162-7

DISMISSAL WITH PREJUDICE OF DEFENDANT JOHN G. WALRATH

COMES NOW, Frank Dicus, Plaintiff, by and through his counsel of record WEINSTOCK & SCAVO, P. C., hereby dismisses his claims against Defendant John G. Walrath only in the above -styled case. Said dismissal is *with prejudice*.

Respectfully submitted this 8 day of September, 2003

/Sd/

Michael Weinstock
Georgia Bar no. 746454
Richard J. Capriola
Georgia Bar No.108880
Sharon M. Lewonski
Georgia Bar No. 451818
Attorneys for Plaintiff

WEINSTOCK & SCAVO, P.C.
3405 Piedmont Road, Suite 300
Atlanta, Georgia 30305

APPENDIX E Record Page Nos. 001186

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

FRANK DICUS
Plaintiff

vs.
MOHAMMAD A, Faiyaz
SURAIYA A. MATEEN
ROOHI FATIMA FAIYAZ
REEMA MOHAMMEDI
JOHN G. WALRATH

Defendants

CIVIL ACTION
FILE NO. 98-A-2162-2

ORDER

Having come before the Court, Plaintiff's Motion to Extend Discovery, and for good cause shown, it is hereby,

ORDERED AND DECREED, that Paintiff's Motion is Granted and that the discovery period in this

case shall be extended up to , and including three months from the date of the Court's order ruling on Motions scheduled for 12-21-98.

SO ORDERED this 10 day of November , 1998

/Sd/

MELODIE SNELL CONNER
Judge, Gwinnett County Supeior Court

Prepared by:

John T. Lueder Esq.
Georgia Bar No.460665
Attorney for Plaintiff
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3405 Pidmont Rd, NE., Suite 300
Atlanta, Georga 30305
404 231 3999

APPENDIX F

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

FRANK DICUS
Plaintiff

vs.

MOHAMMAD A, Faiyaz
SURAIYA A. MATEEN
ROOHI FATIMA FAIYAZ
REEMA MOHAMMEDI
JOHN G. WALRATH

Defendants

CIVIL ACTION
FILE NO. 98-A-2162-2

NOTICE TO TAKE DEPOSITION

TO: Suraiya a. Mateen
c/o Robert Mcdonnell, Esq.
Alexander Professional Bldg.
2014 Beaver Ruin Road
Norcross, Georgia 30071

YOU ARE HEREBY NOTIFIED that on Thursday, September 9, 1999, beginning at 1:00 p.m., the Plaintiff will proceed to take the oral deposition of Defendant

Suraiya A. Mateen, pursuant to O.C.G.A. § 9-11-30, for the purpose of discovery and any and all other puposes allowed under the Georgia Civil practice act. The deposition ill be taken at the law offices f Winstck & Scavo , P.C. , 3405 Piedmont Road, N.E., Atlanta, Geogia, 30305 before a certified court reporter

This 31 day of August, 1999.

____/Sd/_____
Richard J. Capriola
Georgia Bar No: 108880
Attorney for Plaintiff

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